



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 21, 2013

Mr. Robb D. Decker
Counsel for the Navarro Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2013-02965

Dear Mr. Decker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 479365.

The Navarro Independent School District (the "district"), which you represent, received a request for information related to a specified incident and certain policies and procedures. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested policies and procedures. To the extent information responsive to the this portion of the request existed on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You state you have redacted confidential student information

under FERPA. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to the submitted information, other than to note that parents have a right of access to their own child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Because the educational authority in possession of the education records is now responsible for determining the applicability of FERPA, we will only consider the claimed exceptions under the Act for the requested information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides in part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency . . . on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

Fam. Code § 261.201(a), (k); *see id.* §§ 101.003 (defining child for purposes of Family Code title 5), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261). You contend some of the information at issue was used or developed in an investigation under chapter 261 of the Family Code. Although the district is not an agency authorized to conduct an investigation under chapter 261, section 261.406 of the Family Code authorizes the Texas Department of Family and Protective Services ("DFPS") and law enforcement agencies to conduct investigations involving public schools under chapter 261. *See id.*

§§ 261.103 (listing agencies that may conduct investigations under Fam. Code ch. 261), .406 (investigations in schools). Based on your representations and our review of the information at issue, we agree the information we have marked is confidential under section 261.201(a) of the Family Code. However, we find you have failed to demonstrate how any of the remaining information at issue was used or developed in an investigation under chapter 261. Accordingly, none of the remaining information at issue is confidential under section 261.201(a) of the Family Code. We note section 261.201(k) permits the investigating agency to release information relating to an investigation under chapter 261 to a parent of the child who was the subject of the alleged or suspected abuse or neglect, unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). However, although the requestor is the parent of the child concerned, section 261.201(k) is not applicable because the district is not the agency that conducted the investigation. We therefore conclude the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ The remaining information must be released to the requestor.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

¹We note a parent or legal representative of a child who is the subject of reported abuse or neglect may have a right of access to certain abuse and neglect records maintained by DFPS. Section 261.201(g) of the Family Code provides that DFPS, upon request and subject to its own rules, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if [DFPS] has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure. *See* Fam. Code § 261.201(g).

Ref: ID# 479365

Enc. Submitted documents

c: Requestor
(w/o enclosures)